



# CITY OF BUFFALO

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## Request for Proposals



## **Former High Hopes Club House 2969-2971 Bailey Avenue**

### **ISSUE DATE:**

Friday December 21, 2019

### **PROPOSAL SUBMISSION DEADLINE:**

Friday March 1, 2019 12:00pm(EST)

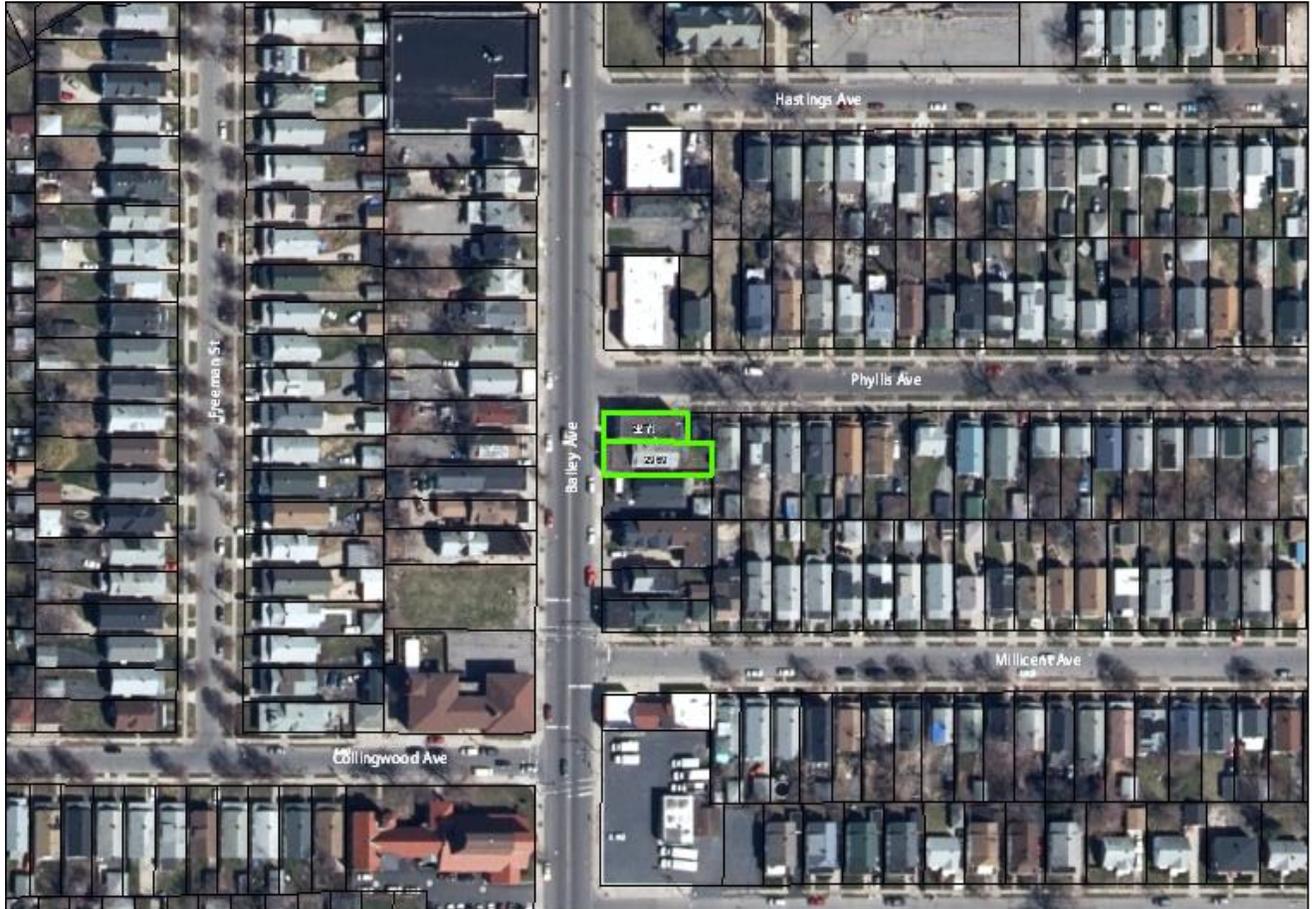
**CITY OF BUFFALO  
OFFICE OF STRATEGIC PLANNING  
DIVISION OF REAL ESTATE**

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The City of Buffalo (hereinafter referred to as “the City”) is issuing a Request for Proposals (RFP) for the sale and redevelopment of the former High Hopes Club House (“Property”) located at 2969-2971 Bailey Avenue Buffalo, New York. The connecting buildings make up a 2 story structure on two adjoining parcels. 2969 Bailey was originally constructed in 1922 with a store front addition built in 1940, the modest art deco structure at 2971 Bailey was built in 1930. A second floor interior hallway connects the 2 buildings. The site encompasses approximately 5,655 square feet and is currently vacant. Title to the property is held by the City of Buffalo.



The property is located on Bailey Avenue, an active commercial corridor with heavy vehicular traffic. The buildings are just south of the Kensington Expressway and are surrounded by the Ken-Bailey residential neighborhood. The site is also adjacent to the Buffalo Promise Neighborhood which encompasses 3 primary schools, and is approximately 1.5 miles from the University at Buffalo South Campus.

The RFP is seeking a qualified purchaser with the expertise, financial capacity, and experience to prepare redevelopment concepts for the development of the Property in accordance with the overall plan for the area. The RFP instructs prospective developers and/or development teams to submit development proposals for the property. The proposal requires a description of the proposed use, a plan for the purchase, rehabilitation, financing together with the developer or development teams experience. All proposals must comply with federal and state laws and city ordinances. Depending on the number of proposals received, the City may request more detailed information by selecting some proposals for further consideration in a short list of finalists and/or for presentation in the community.

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Compliance with the City of Buffalo Green Code Unified Development Ordinance is expected, including but not limited to setback, height, transparency, pedestrian access and other building design standards; landscape, storm water management, outdoor lighting, parking (for both vehicles and bicycles), transportation demand management, signage and other site design standards. The proposed zoning under the Green Code UDO is N-3E (mixed-use edge) which regulates mixed-uses. More details can be found at [www.buffalogreencode.com](http://www.buffalogreencode.com) or by contacting, John Fell, Senior Planner, City of Buffalo, (716) 851-4533, [jfell@city-buffalo.com](mailto:jfell@city-buffalo.com).

**SUBMISSION REQUIREMENTS**

Prospective purchasers, including affiliated corporation, must not owe the City of Buffalo any debt or have violations on any property in the City and are encouraged to visit the property and surrounding area prior to submitting their proposal.

Six (6) copies of the proposal must be submitted on 8/12 x 11 bound document format as well as an electronic file on disc or "flash" drive. If submitted under separate cover, appended studies and graphics should be clearly labeled to identify the project and developer.

**Proposals must be received by registered mail or hand delivered and registered at the reception desk at the address below by 12:00 p.m., February 15<sup>th</sup>, 2018**

Tuona M. Batchelor, Economic Development Coordinator  
Mayor's Office of Strategic Planning  
901 City Hall  
Buffalo, NY 14202  
Re: Former High Hopes Club House

***All proposals must be accompanied by a \$100.00 non-refundable application fee***

All questions or inquiries regarding the RFP must be submitted in writing to [tbatchelor@city-buffalo.com](mailto:tbatchelor@city-buffalo.com). Questions and inquiries will be accepted from all interested parties until February 8, 2019 at 4:00 p.m. (EST). No responses will be provided for questions and inquiries received after this time.

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Proposals must include the following information in a brief and concise format – *not to exceed two (2) pages of narrative*. The City of Buffalo reserves the right to request additional information during the evaluation of responses and to reject any or all proposals.

**PROPOSAL REQUIREMENTS**

On a separate sheet of paper attached to the proposal identified as: *Development Description* - explain, in detail the general approach to developing the Property including:

- Complete attachment A.
- A letter of interest.
- A brief description of the project.
- The proposed use or uses of the building including square footage, mix of tenants, owners, services, and market conditions that support the proposed uses.
- Outline a plan to work and partner with surrounding community, including collaboration with both public and private institutions.
- Explain how the proposed project will add to the character of the district.
- Inclusion is a core value to Mayor Brown's Administration. The project must show meaningful participation from certified Minority and Women-Owned Business Enterprises (M/WBE), minority and women workforce participation and mentor protégé opportunities at all project levels, including, financing, management, design, and construction.

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**Sale Price/ Development Costs**

Proposals must clearly state the offer/bid for the Property. Complete *Attachment (B)* on page 15.

- Proposed Purchase Price, unless otherwise permitted by law, the City of Buffalo is required to dispose of real property at the highest marketable value and that should be considered by the developer or development team in preparing the development costs. Proposals must clearly state the offer/bid for the property and provide justification/supporting documents.
- An appraisal establishing a sale price must be prepared if an acceptable proposal is selected.
- The appraisal and sale price is subject to review and approval of the City of Buffalo Appraisal Review Board and the City of Buffalo Common Council.
- The determination for eligibility for various incentive programs is the responsibility of the purchaser.

**Financial Ability and Information**

As part of the review process the purchaser must be prepared to submit financial information.

1. Complete Attachment C.
2. Financial Readiness – Submit a letter of good standing issued by a bank or lending institution that provides information with regards to length of time developer has help an account proof of funds, and demonstrates financial capacity.
3. Detail experience – With any public funding sources that may be used for the redevelopment of the proposed project.

**Preliminary Design Submission**

As a separate attachment labeled Attachment D1, and D2 provide the following information:

**D 1.** Cost Estimate/Work Description – Construction cost estimate and detailed work description of all work items proposed to be accomplished and include basis for estimate, engineering estimate, etc.

**D 2.** Schedule of the overall project, the timeline should include important milestones and anticipated date of completion.

**Note:** The City reserves the right to request additional information i.e. renderings, in the case that construction will substantially change the site.

**Reference**

Provide three (3) references from projects previously undertaken by the developer.

**Attach any supplemental documentation that you believe may assist us in the review of your application, including letters of commitment from funding sources and other evidence of financing commitments.**

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**EVALUATION CRITERIA**

The City will enter into an agreement for the transfer of the Property with the applicant whose proposal best meets the following selection criteria and offers the greatest prospect of successful completion.

**Quality of the Plan:**

- Completeness of Application Proposal - all required documents have been submitted and the project is presented in a clear and concise manner.
- Proposed Development must be consistent with local plans - must prove to have impacts on the extent to which the project will be an asset to the neighborhood, the city and the region
- Project Readiness - Overall reasonableness and feasibility of executing the developer's proposed development plan. The likelihood of timely progress toward closing on a property transfer agreement leading to the positive redevelopment of the site.
- Inclusion - Inclusion is a core value to Mayor Brown's Administration. The proposal development must demonstrate meaningful participation from certified Minority and Women-Owned Business Enterprises (M/WBE), minority and women workforce participation and mentor protégé opportunities at all project levels, including, financing, management, design, and construction.

**Experience & Qualifications:**

- Background, qualifications, experience, and expertise of the development team and any affiliated partner in like ventures or similarly sized development or completed similar project(s) but smaller in size and scope. Include developer's experience in working and partnering with communities as well as both public and private partners. In addition, it should detail previous success in engaging the participation of adjoining neighborhoods and communities in the development process.
- Neighborhood economic development/job creation and/or retention.
- Projects stressing diversity within development team, workforce and tenant/owners.

**Financial Considerations:**

- Proposals must clearly state the offer/bid for the property and provide rationale and supporting documentation for assumptions.
- Project budget is complete and all sources and uses of funds are clearly defined and documented with evidence of commitments; costs are limited to amounts or percentages specified in the request for proposals.
- Cost effectiveness, reasonableness of the development budget.
- The financial feasibility based on realistic development and operating pro forma.
- Reasonable certainty of prospective cash flows incorporated into team's analysis.
- Demonstrated financial capacity of the team and its individual members.

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**RESERVATIONS**

- The City reserves the right to stop the selection process at any time if it is considered to be in the best interest of the City. The City also reserves the right to reject any or all proposals submitted.
- The City reserves the right to seek additional information from respondents and related entities.
- All decisions related to this RFP are subject to all applicable federal, state and local laws and regulations, and the policies and procedures of the City of Buffalo.
- All costs associated with the preparation of the proposal, as well as any other related materials, will be borne by the respondent.
- The determination for eligibility for various incentive programs is the responsibility of the developer or development team.
- Proposals are to be submitted with a non-refundable filing fee of \$100.00 in the form of Cashier's check or money order.

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**TERMS AND CONDITIONS**

The City will enter into an agreement with a preferred Redeveloper who will retain that status for a period of six (6) months. The designation will be subject to the following terms and conditions:

- The successful negotiation of a Contract of Sale for approval by the City of Buffalo Common Council.
- Payment of a designation fee of One Thousand Dollars (\$1,000.00) per month by Redeveloper to the City payable within five (5) days from the date of designation – by Council - and due thereafter the first day of every month. In the event Redeveloper shall exercise its option to acquire said property pursuant to the Contract of Sale to be negotiated by Redeveloper and the City, said option fee shall be credited towards the purchase price. In the event that Redeveloper shall not proceed with the redevelopment of the property within the designation period, Redeveloper shall forfeit all monies paid on account and the City shall retain all such monies.
- Redeveloper is responsible for performing any soil test borings and soil investigations, as per license agreement to be granted by the City, for the purpose of determining, to developer's satisfaction, the suitability of the site for its intended use, and the presence or absence of hazardous substances as such term is used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (C.E.R.C.L.A) 42 U.S.C.§ 9601 *et seq.*; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801 *et seq.*; The Resource Conservation and Recovery Act, as amended , 42 U.S.C § 6901 *et seq.*; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.
- Individuals and/or corporations having outstanding taxes, water bills, parking tickets, user fee and/or demolition liens or any other liens or obligations owed to the City of Buffalo, or code violations existing on any property owned by them, are not eligible for designation.
- Upon signing of a Contract of Sale, payment by the Redeveloper to the City of a non-refundable deposit, in the amount of ten percent (10%) of the agreed to purchase price.
- Submission by the developer or development team of monthly progress reports to the Office of Strategic Planning, Division of Real Estate.
- Attached is the Release and Indemnity Agreement that will be required to be fully signed by the developer or development team and be released prior to conveying title.

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**GENERAL REQUIREMENTS**

1. Non-Discrimination

The successful developer(s) shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The successful developer(s) shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the developer(s) shall, in all solicitations or advertisements for employees placed by or on behalf of the developer(s), state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements the Buffalo City Code and Ordinances.

2. Americans with Disabilities Act Compliance Provisions

Any developer(s) awarded a contract pursuant to the RFP are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires vendors associated with the City of Buffalo to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Developer(s) also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination.

In the event of the contractor's noncompliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible by the Buffalo Common Council from any further participation in City contracts in addition to other remedies as provided by law.

3. Applicable Law

The laws of the State of New York shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Erie, State of New York, regardless of the place of business, residence or incorporation of the developer. Each party agrees that all claims and matters shall be heard and determined in any such court and each party waives any right to object to such filing on venue, forum non-convenient or similar grounds.

4. Conflict and Priority

In the event that a conflict is found between provisions in any contract arising from this Request for Proposals, the successful developer's proposal or the City's Request for Proposals, the

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provisions in the following rank order shall take precedence: 1) Contract; 2) Request for Proposals; and 3) developer's proposal.

5. Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from any contract arising from this RFP shall constitute the property of the City. The City may use, extend, or enlarge any document produced under the contract without the consent, permission of, or further compensation to the developer.

6. Disclaimer

This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This RFP is not binding on the City. No other party, including any developer to this RFP or further developers to any RFP that may be issued by the City, is intended to be granted any rights hereunder. Any response to this RFP, including written documents and verbal communication, with the exception of materials marked as trade secrets or confidential, may be subject to public disclosure by the City, or any authorized agent of the City. Any materials submitted or ideas elicited in response to this RFP shall be the sole and absolute property of the City with the City having title thereto and unrestricted use thereof.

7. Publicity

All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this RFP and/or the services or products sought by this RFP and/or any contract awarded pursuant to this RFP shall require the prior written approval of the City.

8. Freedom of Information Law

The City of Buffalo is subject to the provisions of Article 6 Section 89 of New York State Public Officer's Law, entitled the Freedom of Information Law. All proposals, in their entirety, submitted in response to this Request for Proposal shall constitute a record subject to public disclosure pursuant to the Freedom of Information Law. It is the sole responsibility of each Developer to this Request for Proposal to identify those portions deemed to constitute a "trade secret" or proprietary information of the commercial enterprise. Any such information shall be clearly marked "CONFIDENTIAL". The phrase trade secret is more extensively defined to include a formula, process, device or compilation of information used in one's business which confers a competitive advantage over those in similar businesses who do not know it or use it. The subject of the trade secret must not be of public knowledge or of a general knowledge in the trade or business. A corresponding letter, on company letterhead, must be provided describing the factors and extent to which the disclosure of the "CONFIDENTIAL" information would cause substantial injury to the competitive position of the commercial enterprise. The entire proposal shall not be marked "CONFIDENTIAL". Any portion of the proposal that is not clearly identified as "CONFIDENTIAL" may be disclosed pursuant to the Freedom of Information Law. **THE CITY OF BUFFALO DOES NOT ASSUME ANY RESPONSIBILITY WHATSOEVER TO ANY OFFEROR IN THE DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION LAW, COURT ORDER, OR ANY OTHER METHOD OF DISCLOSURE PROVIDED FOR UNDER THE LAW.**

9. Conflicts of Interest

Confidentiality and lack of potential conflicts of interest is vital to maintaining the integrity of every contract entered into with the City. **Therefore, each Developer must disclose any perceived,**

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**potential or actual conflicts of interests and/or relationships/connections.** Such relationships may include, but are not limited to, connections to persons and organizations within the City of Buffalo through:

1. Professional or Political associations
2. Political donations
3. Blood or Marriage
4. Friendships
5. City of Buffalo employees who currently work for your company, or come to work for your company during the RFP process, and after (should you receive a contract from the City of Buffalo) as employees or consultants
6. Union Affiliations/Memberships
7. Board Member

Each Proposer further agrees that no member of the governing body, officer, employee or agent of the City shall have any pecuniary interest or otherwise, direct or indirect, in the any contract arising from this RFP.

10. Statement of Compliance and Conflicts of Interest

Your signature below denotes that your organization, company or corporation and/or the officers, directors, employees or agents thereof have reviewed and agreed to comply with State Finance Law §139-k. No past or present lobbyist, employee, officer or board member of your organization, company or corporation may contact any past or present City of Buffalo Employee, Union Leader, Elected Official (City or otherwise) in an attempt to influence the outcome of the RFP decision.

Additionally, any potential or identified conflicts of interest shall be disclosed. As conflicts are discovered, they must be disclosed in writing, to the designated contact person identified in the RFP, during the entire RFP, award, contract negotiation, ratification, and execution process and even after contract award.

Conflict or Potential Conflict:

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**NON-COLLUSION CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit a bid for the purpose of restricting competition.

FIRM OR CORPORATION NAME \_\_\_\_\_

PRINCIPAL ADDRESS \_\_\_\_\_  
STREET

CITY STATE ZIP CODE

SIGNATURE OF INDIVIDUAL, PARTNERS OR OFFICERS

\_\_\_\_\_  
(SIGNATURE) (TITLE) (TYPE OR PRINT NAME ABOVE)

\_\_\_\_\_  
(SIGNATURE) (TITLE) (TYPE OR PRINT NAME ABOVE)

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**BIDDERS AFFIRMATIVE ACTION STATEMENT**

The \_\_\_\_\_

(Company Name)

hereby states that we will make good faith efforts to ensure a diverse workforce and minority business participation for this proposal/bid in accordance with the City of Buffalo Charter, Chapter 96, Bonds and Contracts.

We will work toward a minority workforce goal of 25%, and woman workforce goal of 5%. In addition, we will work toward a business utilization goal for minority business enterprise of 25% and woman business enterprise of 5%.

\_\_\_\_\_

(Signature of Authorized representative of Bidder)

Date \_\_\_\_\_

**BIDS/PROPOSALS FAILING TO INCLUDE OR COMPLETE ANY OF THE ABOVE ITEMS WILL BE CONSIDERED NON-RESPONSIVE AND WILL NOT BE ACCEPTED.**

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Attached is the Release and Indemnity Agreement that will be required to be signed by the developer or development team.

**ATTACHMENT (A)  
Request for Proposal Form**

**Date of Submission:** \_\_\_\_\_

**Project Name (if applicable):** \_\_\_\_\_

**Site Address:**

\_\_\_\_\_  
Street  
\_\_\_\_\_  
State Zip City

**APPLICANT INFORMATION (Owner Entity)**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
Street

City State Zip

**Contact:** \_\_\_\_\_

**Home Phone #:** ( ) \_\_\_\_\_ **Work Phone #:** ( ) \_\_\_\_\_ **Fax #:** ( ) \_\_\_\_\_

**E-Mail Address** \_\_\_\_\_

**1. Legal Ownership Entity:**

- General Partnership
- Individual
- Not for Profit Organization
- Corporations
- Limited Partnerships
- Other \_\_\_\_\_

**2. Legal Status of Organization:**

- Currently Exists
- To be Formed
- Estimated Date of Filing \_\_\_\_\_



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**ATTACHMENT (A)**

**Attorney:** \_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(     ) \_\_\_\_\_ (     ) \_\_\_\_\_  
(Phone) (Fax)

**Owner:** \_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(     ) \_\_\_\_\_ (     ) \_\_\_\_\_  
(Phone) (Fax)

**Architect:** \_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(     ) \_\_\_\_\_ (     ) \_\_\_\_\_  
(Phone) (Fax)

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**ATTACHMENT (A)**

**Sponsor:** \_\_\_\_\_

(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(     ) \_\_\_\_\_ (     ) \_\_\_\_\_  
(Phone) (Fax)

**Contractor:**

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(     ) \_\_\_\_\_ (     ) \_\_\_\_\_  
(Phone) (Fax)

**Management  
Agent:**

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(     ) \_\_\_\_\_ (     ) \_\_\_\_\_  
(Phone) (Fax)



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**ATTACHMENT (B)**

**DEVELOPMENT COST**

**Proposed Acquisition Cost:** \$ \_\_\_\_\_

Land \$ \_\_\_\_\_

Buildings \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

**Construction Costs:**

**Hard Costs**

Site Work \$ \_\_\_\_\_

Fixtures, Furnishing & Equipment \$ \_\_\_\_\_

Plumbing, Electrical, Security System \$ \_\_\_\_\_

HVAC \$ \_\_\_\_\_

Foundation, Framing, Roofing, etc. \$ \_\_\_\_\_

Landscaping \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

**Soft Costs:**

Architectural/Engineering Fees \$ \_\_\_\_\_

Legal Fees \$ \_\_\_\_\_

Accounting Fees \$ \_\_\_\_\_

Administrative/Development Fees \$ \_\_\_\_\_

Survey \$ \_\_\_\_\_

Title Work \$ \_\_\_\_\_

Taxes \$ \_\_\_\_\_

Insurance \$ \_\_\_\_\_

Relocation \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

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**ATTACHMENT (B)**

**Miscellaneous Costs:**

Developer Fee \$ \_\_\_\_\_

Project Reserve \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

**Contingency:** \$ \_\_\_\_\_

Other Fees not mentioned (Please list) \$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**Total Costs \$ \_\_\_\_\_**

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**ATTACHMENT (C)**

**PROPOSED DEVELOPMENT FINANCING**

**SOURCES OF FUNDS**

<u>Source of Funds</u>	<u>Amount</u>	<u>Use of Funds</u>	<u>Status (Circle)</u>
1. _____	_____	_____	Secured/Pending
2. _____	_____	_____	Secured/Pending
3. _____	_____	_____	Secured/Pending
4. _____	_____	_____	Secured/Pending

**1. Total Financing**

Total Private Sources \$ \_\_\_\_\_

Total Public Sources \$ \_\_\_\_\_

Developer's Equity \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**TOTAL ALL SOURCES** \$ \_\_\_\_\_

(Public Funding – Developer or development team must identify any proposed or anticipated public funding requests including any request for infrastructure improvements, property tax exemptions, sales tax exemptions on building materials, and PILOT Agreements.)

Note: Total from all sources must match total Development Costs on previous page.

**2. Banking References**

**Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

(Street)

\_\_\_\_\_

(City)

(State)

(Zip)

**Contact Person:**

\_\_\_\_\_

**Phone:**

**Account Number:**

\_\_\_\_\_

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**Release and Indemnity Agreement**

This Release and Indemnity Agreement is given by \_\_\_\_\_, Buyer's Name to be inserted, (hereinafter "Grantee") to the City of Buffalo (the "City") as a condition to the delivery of, and as a material part of, a quit claim deed to certain real property commonly known as \_\_\_\_\_ in the City of Buffalo (the "Property").

**I. RELEASE PROVISION:** Grantee covenants and agrees at its sole cost and expense, to defend, release and save harmless City and its officers, employees, directors, agents and representatives from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted or otherwise incurred by Grantee, individually or collectively, at any time resulting from or arising out of:

(a) the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum based substances, in, on, above or under the Property or migrating to parcels now or hereafter owned by Grantee;

(b) any personal injury, wrongful death, or property or other damages arising under any statutory, common law or tort law theory, arising out of, or related to, the remediation of the Property or parcels now or hereafter owned by Grantee;

(c) Grantee's failure to promptly undertake and/or diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and/or other remedial actions with respect to a release or threat of release of any hazardous substance, including but not limited to petroleum or petroleum based products, on, at or from the Property or migrating off the Property to any and all other locations off-site;

(d) human exposure to any hazardous substance, including but not limited to petroleum or petroleum based products, noises, noxious fumes, vibrations, or nuisances of whatever kind from any condition on the Property resulting from Hazardous materials, or the ownership, use, operation, sale, transfer or conveyance thereof;

(e) a violation of any applicable state or federal statute or regulation with respect to any condition now or hereafter existing on the Property;

(f) any investigation, prosecution, enforcement, action, suit, request to negotiate or consent order or other action by any governmental body or office, including but not limited to the New York Department of Environmental Conservation ("DEC") or the Environmental Protection Agency ("EPA") related in any manner whatsoever to the Property;

(g) any and all costs in connection with any clean-up, removal and/or investigation of environmental contamination, deposited on or into the Property or migrating therefrom, whether from on or off site, for which legal requirements mandate be cleaned up at, or removed from, the Property or any other property contaminated from the migration of hazardous material off-site.

The release of City hereunder shall in no way be limited, abridged, impaired or otherwise affected by the following:

(i) the release of Grantee, the City and or any other person from the performance or observance of this agreement by operation of law, City's voluntary acts or otherwise;

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- (ii) the invalidity or unenforceability of any of the terms or provisions of any of the Property purchase documents and or related documents;
- (iii) any applicable statute of limitations;
- (iv) any investigation or inquiry conducted by or on behalf of the City or any other indemnitee (and or releasee) or any information which City or any other indemnitee (and or releasee) may have or obtain with respect to the environmental or ecological condition of the Property;
- (v) the sale, transfer or conveyance of all or part of the Property;
- (vi) the release or discharge in whole or in part of Grantee in any bankruptcy, insolvency, reorganization, arraignment, readjustment, composition, liquidation or similar proceeding or;
- (vii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of Grantee.

Grantee, and its representatives, agents, employees, successors, predecessors and or assigns, shall be precluded now and in the future from asserting any and all claims (whether direct claims, cross-claims, third-party claims, defenses, counter-claims or other types of claims) against City, individually or collectively, including any claims under (without limitation) the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law, and or the New York State Navigation Law.

**II. REPRESENTATIONS AND WARRANTIES:** City makes no representations or warranties with respect to the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum based substances, in, on, above or under the Property, and/or migrating off the Property to any and all other locations off-site. City makes no representations or warranties as to any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon. Further, the City makes no representations and or warranties whatsoever as to the condition and or as to the permitted use of the Property, the improvements thereon, environmental conditions at the Property and or in connection with the title to the Property or any other matter with respect to the Property.

**III. GRANTEE ACKNOWLEDGEMENTS: GRANTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY SHALL CONVEY ITS INTEREST IN THE PROPERTY TO GRANTEE AND THAT GRANTEE SHALL ACCEPT THE PROPERTY “AS IS, WHERE IS AND WITH ALL FAULTS” AND THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM GRANTOR, NOR ANY OFFICER, EMPLOYEE, ATTORNEY, AGENT OR BROKER OF CITY AS TO ANY MATTER WHATSOEVER CONCERNING THE PROPERTY INCLUDING, BUT NOT BY WAY OF LIMITATION:** (i) the quality, nature habitability, merchantability, use, operation value, marketability, adequacy or physical condition of the Property or any aspect or portion thereof, including, without limitation, structural elements, appurtenances, access, landscaping, parking, plumbing, sewage, and utility systems, facilities and appliances, soils, geology and/or groundwater, (ii) the dimensions or lot size of the Property, (iii) the development or income potential, or rights of or relating to, the Property, or the Property’s use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Property for any particular purpose, (iv) the zoning or other legal

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status of the Property or any other public or private restrictions on the use of the Property, (v) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any Governmental Authority or of any other person or entity (including, without limitation, the Americans with Disabilities Act), (vi) the ability of Grantee to obtain any necessary governmental approvals, licenses or permits for Grantee's intended use or development of the Property, (vii) the presence or absence of Hazardous Materials on, in, under, above or about the Property, (viii) the quality of any labor or materials used in any improvements, (ix) the condition of title to the Property, (x) City's ownership of the Property or any portion thereof, or (xi) the economics of or the income and expenses, revenue or expense projections or other financial matters, relating to, the operation of the Property. Without limiting the generality of the foregoing, Grantee expressly acknowledges and agrees that Grantee is not relying upon any representation or warranty of City, nor any officer, employee, attorney, agent or broker of City, whether implied, presumed or expressly provided at law or otherwise, arising by virtue of any statute, common law or other legally binding right or remedy in favor of Grantee. Grantee further acknowledges and agrees that City is under no duty to make any inquiry regarding any matter that may not be readily known by City and or by any officer, employee, attorney, agent or broker of City. This section and all provisions of this Agreement shall survive the delivery, acceptance and or recordation of the deed to which this Agreement is attached.

Any reports, repairs or work required by Grantee are the sole responsibility of Grantee, and Grantee agrees that there is no obligation on the part of City to make any changes, alterations or repairs to the Property or to cure any violations of law or to comply with the requirements of any insurer. Grantee, at Grantee's sole cost and expense, shall be responsible for obtaining any permits necessary for use of the Property and shall also be responsible for any repairs or alterations necessary for same, all at Grantee's sole cost and expense.

Grantee agrees to remediate any and all contamination deposited on to or into the Property or migrating therefrom as may be directed by any governing regulating agencies, including, but not limited to the DEC and/or EPA.

By executing this Release and Indemnity Agreement, Grantee acknowledges that Grantee has had the right and a full opportunity to conduct any testing or other investigation of the Property and has fully availed itself of such right or has otherwise waived such right and opportunity.

**IV. DEFINITIONS:** As used in this Agreement, the following terms shall have the following meanings:

"Hazardous substance" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous waste, hazardous or toxic substances and any other material defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 *et seq.*; The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy, guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is

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not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act, the Clean Water Act; the Clean Air Act, the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

“Release” with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. Release shall also have the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., and the regulations promulgated thereunder and Articles 15 and 27 of the New York State Environmental Conservation Law, and the regulations promulgated thereunder.

“Remediation” includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to herein.

“Legal Action” means any claim, suit or proceeding, whether administrative or judicial in nature.

“Loss or Losses” includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminution in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys’ fees, engineers’ fees, environmental consultants’ fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards to the extent recoverable at law or in equity.

“Fines” or “Penalties” means any levy imposed by a governmental body or office, including but not limited to the DEC or EPA, authorized by statute or regulation, that is not, directly or indirectly, compensation for, or reimbursement of, any actual cost incurred, liability imposed, or loss sustained by said governmental body or office or any other party. It is specifically understood that “fines” or “penalties” are levies imposed as a punitive or deterrent measure and do not include any other type of loss, except as otherwise defined by statute or regulation.

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**V. THESE PROVISIONS TO RUN WITH THE LAND AND IMPROVEMENTS** All of the provisions contained in this Release and Indemnity Agreement shall run with the land and improvements constituting the Property and shall be binding upon Grantee and all its successors and assigns as well as upon subsequent purchasers or owners of the Property.

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Respondent's Signature